

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF SECRETARY

In the Matter of)
)
Preparation for International)
Telecommunication Union World)
Radiocommunication Conferences)

IC Docket No. 94-31

PETITION FOR PARTIAL CLARIFICATION ~~DOCKET~~ FILE COPY ORIGINAL
AND RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, the Association of American Railroads ("AAR"), by its attorneys, hereby respectfully seeks clarification and/or reconsideration of the Federal Communications Commission's Report ("Report") adopted June 15, 1995, in the above-captioned proceeding. Specifically, AAR requests that the Commission reconsider its proposal to allocate spectrum at 6 GHz for MSS feeder links. Should the 6 GHz band be designated internationally for NGSO Mobile Satellite Service ("MSS") feeder link use, AAR urges the Commission to clarify and strengthen its commitment to protect the fixed microwave licensees' rights to occupy the 6 GHz band.

I. INTRODUCTION

In Reply Comments filed in this proceeding, AAR urged the Commission to exercise caution in making allocations for MSS feeder links in the 6 GHz band.^{1/} AAR reaffirms that position

^{1/} Reply Comments of AAR in IC Docket No. 94-31, filed April 14, 1995.

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in this Petition and requests the Commission to reconsider its proposal to allocate spectrum at 6 GHz to MSS feeder links. The railroads, along with the other fixed microwave users, cannot maintain the necessary high level of operational reliability if they are forced to accept less than primary status in the bands they occupy. Moreover, sharing with the MSS in the 6 GHz band is problematic because the band is already heavily occupied and this use will increase as systems are relocated from the 2 GHz band. The Commission's Report expressly cited the Telecommunications Industry Association ("TIA") to the effect that the "6 GHz band is already becoming saturated."^{2/}

The railroads rely on Fixed Service ("FS") communications systems operating in the 2 and 6 GHz bands to support critical safety functions for more than 1.2 million freight cars on more than 215,000 miles of track. These systems not only remotely control the switching of tracks necessary for safe routing of trains through busy depots and freight yards, but also relay critical telemetry data from trackside defect detectors located throughout the rail network. Any degradation in the quality of, or interference to, the railroads' communications networks could endanger both life and property.

In light of these concerns, AAR urges the Commission to review its proposal to allocate spectrum at 6 GHz for MSS feeder links. Because of the existing heavy usage of the band and the expected increase in usage due to predicted expansion and

^{2/} Report at para. 52.

relocation of the 2 GHz FS licensees, sharing must be studied far more exhaustively than it has been to date.

If the Commission continues to advocate allocation of spectrum at 6 GHz to MSS feeder links, AAR urges the Commission to clarify its commitment to the relocated fixed microwave licensees and to specify more clearly the explicit protections it will establish for both the ongoing 2 GHz relocation negotiations and for ensuring the continuous and reliable operation of the FS at 6 GHz. Specifically, AAR requests the Commission to guarantee that the status of the FS systems will not be downgraded or their system reliability compromised.

II. ARGUMENT

FS use of the 6 GHz band must remain unimpaired. The Commission's Report noted the FS concerns regarding the impact of feeder link allocations at 6 GHz on their "current operations and on the ability to accommodate fixed service growth" in the 6 GHz bands.^{3/} These concerns are heightened by the identification of the 6 GHz band as a candidate for relocation by the 2 GHz point-to-point microwave operations that are required to vacate spectrum to make room for PCS.^{4/}

Despite acknowledging these concerns in its Report, the Commission proposed frequencies in the 6650-7075 MHz band for MSS

3/ Id.

4/ See Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, First Report and Order and Third Notice of Proposed Rulemaking in ET Docket No. 92-9, 7 FCC Rcd 6886 (October 16, 1992).

feeder link allocations at the 1995 World Radiocommunication Conference ("WRC-95").^{5/} The Commission stated that if the 6 GHz band is designated internationally for NGSO MSS feeder link use,

we intend to ensure that the current and expected relocation negotiations between 2 GHz PCS licensees and incumbent 2 GHz microwave licensees are not disrupted. To this end, we plan to give priority in the 6 GHz and the 11 GHz bands to relocated 2 GHz microwave licensees during a reasonable period of time. This will allow for conclusion of relocation negotiations for 2 GHz microwave licensees and commencement of their new operations.^{6/}

This discussion raises a number of unanswered questions. Because the Commission's commitments are extremely vague, the value and force of the "protection" of fixed microwave users are in doubt. For instance, it is not clear from the Report exactly how the Commission intends to "give priority" to relocated fixed microwave licensees, as against whom the "priority" will apply, and what specifically that "priority" will entail.

If the Commission intends to provide priority to the relocated 2 GHz microwave licensees as against other FS users, then the Commission will be encouraging conflict within the FS community of users and undermining the status of the 6 GHz FS incumbents. If the Commission intends to provide priority to the relocated 2 GHz microwave licensees as against the MSS proponents, then the Commission is tacitly acknowledging that sharing is problematic because priority will be necessary to

^{5/} Report at para. 49, Table 2.

^{6/} Id. at para. 53 (emphasis added).

protect the rights of the FS. In either case, the concept of a finite period of time after which the priority presumably would cease to exist does not serve its intended purpose -- minimizing disruption to and protecting the interests of the FS users. The implication is that after a designated period of time, the status of the fixed microwave users will be compromised.

As the Commission itself acknowledged, the success of the 2 GHz relocation process for PCS is critically dependent upon the availability of replacement facilities for the fixed microwave incumbents presently occupying the 2 GHz band.^{7/} Unfortunately, however, the Commission seems to have ignored the unalterable fact that the needs of the fixed microwave users will not disappear upon completion of relocation or after the passage of "a reasonable period of time" thereafter. Unless changed or clarified, the Commission's language at paragraph 53 of the Report portends disruption and compromise of the primary status of the fixed microwave systems upon "conclusion of the relocation negotiations" and "commencement of their new operations."^{8/} It is the needs of the users which dictate the demands on particular radio systems, not procedures or time periods. In the case of the fixed microwave users, those needs will not change subsequent to the commencement of operations at new frequencies because the

7/ Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, Third Report and Order and Memorandum Opinion and Order in ET Docket No. 92-9, 8 FCC Rcd 6589, 6595 at n. 17 (1993) (hereafter Third Report and Order).

8/ Report at para. 53.

underlying nature of the use will remain the same. The railroads, for example, will continue to require systems that guarantee the highest level of communications reliability to assure the safe operation of the nation's railroads.

CONCLUSION

For the foregoing reasons, AAR respectfully requests the Commission to clarify and/or modify the Report adopted in this proceeding. In the Emerging Technologies proceeding, the Commission repeatedly stressed its twin goals of "prevent[ing] disruption to existing 2 GHz operations and minimiz[ing] the economic impact on the existing licensees."^{9/} Clarification of the Commission's commitment to protect and preserve the fixed microwave systems will promote those twin goals. The development and evolution of one service, in this case the MSS, should not

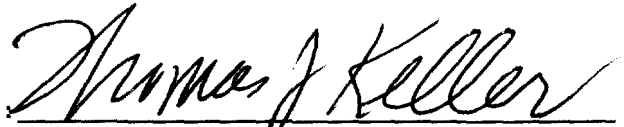
^{9/} Third Report and Order at 6589.

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herald the degradation of others, especially one such as the FS,
which supports so many operations and functions that are critical
to the national economy and essential for public safety.

Respectfully submitted,

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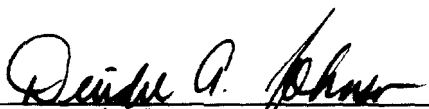
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